

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Brent Tweed, et al

v.

The Town of Nottingham, et al

Docket No. 218-2019-CV-00398

PLAINTIFFS' RESPONSE TO DEFENDANTS' PARTIAL OBJECTION
TO MOTION FOR SUMMARY JUDGMENT

NOW COME the plaintiffs, Brent Tweed and G&F Goods, LLC, and respectfully respond to the defendants' partial objection to motion for summary judgment, and in support thereof states as follows:

1. The defendants' partial objection appears to concede the legal issues raised in the plaintiffs' motion for summary judgment. At the very least, the partial objection does not expressly challenge or argue against the plaintiffs' request that the Court grant summary judgment in favor of the plaintiffs.
2. The defendants do object to the granting of attorney's fees to the plaintiffs, however.
3. While the plaintiffs did put the defendants on notice that it was seeking an award of attorney's fees in both the complaint and in the motion for summary judgment, the plaintiffs did not set forth facts or argument in support of this result because it was premature, as the plaintiffs are not at this the prevailing party.

4. The defendants' partial objection strongly suggests that the plaintiffs will be the prevailing party on the underlying legal issues. However, the plaintiffs also recognize the possibility, however unlikely, that the Court could still rule against the relief requested in the complaint and motion for summary judgment. Accordingly, until the Court rules on the motion for summary judgment, it would be premature for the plaintiffs to file a motion seeking fees.

5. Accordingly, the plaintiffs again put the Court and defendants on notice of their intent to move for attorney's fees and costs if/when they become the prevailing parties following a Court order in their favor.

6. The plaintiffs at that time will present evidence that is not relevant to determination of the underlying legal issues, but that they believe will support their claim to entitlement to attorney's fees under New Hampshire law.

WHEREFORE, the plaintiffs respectfully respond to the defendants' partial objection by stating:

- A. It is currently premature for the plaintiffs to present evidence and argument in support for motion for attorney's fees as they are not presently the prevailing party;
- B. In the likely event that the plaintiffs are the prevailing party, the plaintiffs will at that time file a motion with the court for payment of attorney's fees and costs.

Respectfully Submitted
By his attorneys,
Lehmann Law Office, PLLC

/s/Richard J. Lehmann

February 17, 2020

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CERTIFICATION

I hereby certify that a copy of this pleading was this day forwarded to opposing counsel via the court's electronic case filing system.

/s/Richard J. Lehmann

Richard J. Lehmann